California Fair Political Practices Commission

MEMORANDUM

To: Chairman Randolph, Commissioners Blair, Downey, Huguenin, and Remy

From: Natalie Bocanegra, Commission Counsel
John W. Wallace, Assistant General Counsel
Luisa Menchaca, General Counsel

Re: Extensions of Credit (Section 85307 – Pre-notice Discussion of Proposed Regulation 18530.7)

Date: April 6, 2005

I. EXECUTIVE SUMMARY

This staff memorandum generally addresses whether the term "extension of credit" should be defined by regulation. In the absence of contribution limits, the primary question raised with respect to extensions of credit is how they are to be reported. However, with Proposition 34's addition of section 85307 to the Political Reform Act ("Act"),[1] extensions of credit are reportable contributions subject to the contribution limits of Proposition 34 (Chapter 5, Article 3.) Therefore, in the context of contribution limits, it becomes critical to determine if a particular payment is considered a contribution because it subjects both candidates and the persons who make the payment to potential contribution limit violations.

This memorandum also summarizes the Commission's reporting rules pertaining to unpaid bills, which may be considered extensions of credit. In examining this issue, staff has found that the provision of goods or services most frequently raises the question of <u>when</u> an unpaid bill results in the making of a contribution. Therefore, staff presents for pre-notice discussion two versions of proposed regulation 18530.7 meant to provide how section 85307 applies with regard to goods or services.

<u>Version A</u>: Version A provides that an extension of credit that is a contribution subject to the contribution limit provided under section 85307 includes the following: (1) a payment that involves the provision of goods or services pursuant to an agreement between the provider of the goods or services and a candidate or committee, (2) a payment that is not due until a later date, and (3) a transaction that is not within the "ordinary course of the provider's business." The purpose of the last factor is to distinguish those situations where a vendor is carrying on business as usual with no intention of making a political contribution. Under Version A, the term "ordinary course

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[1] All references are to the Government Code unless otherwise noted.

of the provider's business" is not expressly defined, but there is a presumption that a transaction is in the ordinary course of business if certain criteria are met.

Version B: Version B is a similar regulation. However, under this version, whether an extension of credit by a provider of goods or services becomes a contribution is based on whether a credit arrangement extends over a particular period of time. This is referred to as a "bright line rule." This version is based on a prior version of regulation 18530.7 developed under Proposition 208 rules. It also contains a "safe harbor" for vendors.

The proposed regulation would not apply to local candidates and committees because section 85307 only applies to state candidates for purposes of applying the contribution limits of Article 3, Chapter 5 of the Act. However, from a practical standpoint, since this regulation provides when certain payments become contributions subject to limits, similar rules could apply to local jurisdictions for the purpose of determining when to report such extensions of credit as contributions. Therefore, the staff asks the Commission for guidance as to whether the staff should draft a regulatory proposal that would apply to both state and local candidates with respect to the provision of goods or services.

Staff Recommendation: Staff recommends the adoption of a regulation addressing "extensions of credit" for purposes of section 85307 only. There is public support for both versions. Some members of the regulated community prefer version A because they like the flexibility provided by the drafted "ordinary course of the provider's business" standard. Others express a preference for the "bright line" rule of Version B due to enforcement considerations. The Enforcement Division believes that an "ordinary course of provider's business" standard will be difficult to enforce, as the providers of political services vary significantly in their business practices. Therefore, the division prefers a bright line rule with an accompanying "safe harbor provision" that serves to guide the regulated community as to when there is a potential violation of the Political Reform Act.

Selection of either version is a policy decision before the Commission. As discussed in this memorandum, there are advantages and disadvantages existing with either approach.

II. BACKGROUND

Under the Act, a contribution is defined as:

> "…a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes." (Section 82015.)

A "payment," in turn, means:

> "…a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible." (Section 82044.)

Contributions are frequently thought of as cash payments, but contributions also include non-monetary contributions of goods or services. Regulation 18215(b)(3) defines the term "contribution" to include "[a]ny goods or services received by or behested by a candidate or committee at no charge or at a discount from the fair market value, unless the discount is given in the regular course of business to members of the public." When a person donates goods or services to a committee free of charge, the person makes a non-monetary contribution to the committee. Similarly, when a person pays for services on a committee's behalf, the payment is considered a non-monetary contribution to the committee and is reported on Form 460, Schedule C. (Attachment 1.) Such a payment is referred to as a "third party payment."[2]

In addition, individuals and entities are permitted to loan money to a candidate or committee. Loans, *other than* those made by financial institutions in the ordinary course of business, are also considered contributions. (Sections 82015 and 84216.) For reporting purposes, section 84216 states:

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[2] **Third Party Payments.** A specific type of third party payment occurs when a volunteer or paid employee of a campaign pays for goods or services received from a vendor. If the volunteer or employee expects reimbursement from the campaign committee but has not been reimbursed by the end of the reporting period, the transaction is reported as an accrued expense. If reimbursement does not occur within 45 days, the payment made by the volunteer or employee becomes a non-monetary contribution to the committee, unless the volunteer or employee seeking reimbursement makes a good faith effort to obtain reimbursement and is unable to collect. (Regulation 18526(d).)

When any other type of third party (i.e., a non-volunteer or non-employee) makes a payment to a vendor with the expectation of reimbursement, the payment is reported as an accrued expense if it remains unpaid at the end of the reporting period. Sometimes a third party makes a payment to a vendor to extinguish a candidate or committee's debt with no expectation of reimbursement. In this situation, the third party payment is shown as a non-monetary contribution from the third party on Schedule C, and the campaign committee identifies on Schedule F that the vendor has been paid by a third party. (See Schedule F Form Instructions.)

Example

- Vendor X prints a candidate mailer at a cost of $1,500.
- Debt to Vendor X is reported as an accrued expense on Schedule F for a reporting period ending on June 30, 2004.
- Friend Y pays Vendor X $1,500 for the mailer debt on July 15, 2004, during the next reporting period.
- Friend Y is to be reported as a source of a non-monetary contribution on Schedule C for the reporting period ending on December 31, 2004.

> "(a) Notwithstanding Section 82015, a loan received by a candidate or committee is a contribution unless the loan is received from a commercial lending institution in the ordinary course of business, or it is clear from the surrounding circumstances that it is not made for political purposes.
> (b) A loan, whether or not there is a written contract for the loan, shall be reported as provided in Section 84211 when any of the following apply:
> (1) The loan is a contribution.
> (2) The loan is received by a committee.
> (3) The loan is received by a candidate and is used for political purposes."

A. Classifying Unpaid Bills

As discussed below, the term "extension of credit" has been used to describe certain unpaid bills, raising the issue of whether an "extension of credit" can be an accrued expense, in addition to being a contribution. The following discussion explains how unpaid bills are reported.

1. Unpaid Bills Which Are Accrued Expenses: Accrued expenses are bills for goods or services received but unpaid at the end of a reporting period.[3] For example, if a committee was required to file a campaign statement covering the reporting period ending December 31, 2004, and a bill remained unpaid by the committee on that date, the amount of the bill was to be reported as an accrued expense. (Sections 82025 and 84211(b).) Furthermore, the committee must continue to report and itemize the accrued expense until it is paid in full. (Regulation 18421.6.) Accrued expenses are reportable on Schedule F of the Form 460 once goods or services are received. (See Attachment 3.)

The Act requires that filers itemize expenditures and accrued expenses of $100 or more made during a period covered by a campaign statement, detailing the name of the person to whom the payment was made, the person's street address, the amount of the expenditure, and a brief description for which the expenditure was made. (Section 84211(k).) Filers must also report the total amount of both itemized and un-itemized (less than $100 per vendor) expenditures and accrued expenses. (Sections 84211(h) and (i).) Accrued expenses are *not* considered contributions.

2. Unpaid Bills Which Become Contributions: Sometimes providers of goods or services remain unpaid. Under these circumstances, such bills can become contributions. For example, a committee may have a bill which is subsequently paid by a third party. As previously discussed, the bill ceases to be reported as an accrued expense,

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[3] Bills or obligations that are incurred with and paid to a vendor on a current basis during one reporting period are reported as expenditures on Schedule E. (Attachment 2.) We have advised that such bills or obligations do not constitute accrued expenses under the Act. (Regulation 18421.6(b); *White* Advice Letter, No. I-00-039.)

and the amount of the bill must be reported as a non-monetary contribution to the committee from the third party.

Similarly, if the provider of the goods or services (*i.e.*, "creditor") forgives or reduces a debt or does not otherwise collect what is owed by the committee, the provider/creditor could make a non-monetary contribution to committee. The Commission has provided some general guidelines in advice letters to determine whether the reduction of a debt would be considered a contribution. Those letters provide that committees whose debts are reduced would not be receiving contributions so long as:

1. The decision to reduce the debt is a bona fide business judgment that the full amount is uncollectible;
2. The assessment and reduction of fees are applied in a standard manner to all clients who have not paid their bills; and
3. Reasonable efforts have been made by the creditor to collect the full amount of the debt. (*Cash* Advice Letter, No. A-99-005; *Hansen* Advice Letter, No. I-92-103; *Lowell* Advice Letter, No. A-89-702; *Steinberg* Advice Letter, No. A-86-344; see also Staff Memorandum entitled "Reasonable Effort to Collect a Bad Debt," January 1, 1988.)

Therefore, if a candidate or committee is allowed an extension beyond the time normally allowed to pay the bill, the creditor may be deemed to be making a non-monetary contribution to the candidate or committee, and it should be reported as such. However, there is no set time line for the conversion from an unpaid bill to a contribution to occur.[4]

When contribution limits are in effect, questions arise more frequently as to when an unpaid bill becomes a contribution. For purposes of the contribution limits of Proposition 208, prior regulation 18530.7 was adopted to define "extension of credit" to mean "the provision of goods and services for which payment in full is not received" to address this issue.[5] This regulation provided that an extension of credit for a period of more than 30 days (other than those from a financial institution given in the normal course of business) was subject to the contribution limits. Under this definition, an extension of credit was a type of unpaid bill that in 30 days converted to a contribution. The 30-day time period was statutorily mandated by Proposition 208.

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[4] Joe Lynn of San Francisco, California, has commented that the potential for abuse of the contribution limits is enormous where unpaid bills have not been paid. In particular, Mr. Lynn believes that grassroots campaigns are at a disadvantage because vendors will typically not extend credit that is maybe extended to wealthy campaigns.

[5] Under Proposition 208, extensive meetings were held with members of the regulated community to develop regulation 18530.7. Those who participated in drafting this regulation included staff, vendors, political attorneys, treasurers, and campaign consultants. The regulation became operative on December 11, 1997, and was enjoined by the U.S. District Court for the Eastern District of California on January 6, 1998.

B. "Extension of Credit"

1. Pre-Proposition 34 Interpretation: Committees routinely engage in transactions that are commonly characterized as extensions of credit. Some examples from past advice letters[6] are:

- Legal services provided to a candidate with the expectation that the services will be paid for at a later date. (*Bauer* Advice Letter, No. A-97-348.)
- Campaign services provided to a candidate with the expectation that the services will be paid for at a later date. (*Ammiano* Advice Letter, No. A-97-128.)
- Products provided to a committee pursuant to a consignment agreement. (*Miller* Advice Letter, No. I-97-143.)
- The cost of food, drink, and use of restaurant facilities provided by a restaurant owner until reimbursed by the candidate or committee. (*King* Advice Letter, No. A-97-127.)

Many of the examples involve the reporting of the provisions of goods or services for which payment in full is not made by a candidate or committee at the time the goods or services are received.

The term "extension of credit" is not currently defined in the Act or regulations although language of recordkeeping regulation 18401(a)(5)(B), adopted in 1992, contains the term. As used in this regulation, "extension of credit" is one type of agreement reflecting the indebtedness which gives rise to a loan.

2. Proposition 34 Provisions: The current version of section 85307 was added by Proposition 34 and provides:

> "(a) The provisions of this article regarding loans apply to ***extensions of credit***, but do not apply to loans made to a candidate by a commercial lending institution in the lender's regular course of business on terms available to members of the general public for which the candidate is personally liable."
>
> "(b) Notwithstanding subdivision (a), a candidate for elective state office may not personally loan to his or her campaign, including the proceeds of a loan obtained by the candidate from a commercial lending institution, an amount, the outstanding balance of which exceeds one hundred thousand dollars ($100,000). A candidate may not charge interest on any loan he or she made to his or her campaign." (Emphasis added.)

[6] Many of these examples are taken from past advice letters interpreting provisions under Proposition 208, where a mandated 30-day period prompted requests for advice regarding extension of credit rules.

The Commission has interpreted this section at prior meetings. Most recently, at its October 2004 meeting, the Commission examined its initial interpretation of section 85307(a) and revised regulation 18530.8(c) to provide that loans from a commercial lending institution count towards the $100,000 limit of Section 85307(b). Under an initial interpretation, the $100,000 limit was not considered to apply to such loans. Section 85307(b) was also amended to reflect that same conclusion. (Senate Bill 1449; Ch. 815, Stats. 2004.)

In considering the above matter, the Commission determined that "extensions of credit," as the term is used in section 85307(a), are subject to the contribution limits. (See Staff Memorandum to the Commission entitled, "Personal Loans (Section 85307) – Pre-notice Discussion of Proposed Amendments to Regulation 18530.8," July 23, 2004; see also Commission Meeting Minutes for the August 2004 meeting.) This conclusion was reached by interpreting the phrase "provisions of this article regarding loans" as referring to the contribution limit provisions found in sections 85301 and 85302 since these provisions pertain to loans. In other words, section 85307(a) has been read by the Commission to provide a contribution limitation on "extensions of credit" consistent with the limit applicable to loans. (*Ibid*.)

Proposition 34's restrictions on extensions of credit as embodied in the current version of section 85307 are similar to those of Proposition 73.[7] However, Proposition 73 contained provisions that referred explicitly to loans.[8] In comparison, Proposition 208, passed by the voters in November 1996 (effective January 1, 1997), provided that extensions of credit for more than 30 days, other than loans from financial institutions given in the normal course of business, were subject to all contribution limitations.[9] In addition, Proposition 208 provided that a candidate could not make personal loans to his or her campaign or campaign committee that totaled more than $20,000 in any single election.

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[7] Proposition 73's section 85307 provided that: "The provisions of this article regarding loans shall apply to extensions of credit, but shall not apply to loans made to the candidate by a commercial lending institution in the lender's regular course of business on terms available to members of the general public for which the candidate is personally liable."

[8] For example, Proposition 73's section 85301(a) began, "No person shall make…any contribution or loan which would cause..."

[9] Proposition 208's version of Government Code section 85307 stated:

> "(a) A loan shall be considered a contribution from the maker and the guarantor of the loan and shall be subject to all contribution limitations.
> (b) Extensions of credit for a period of more than 30 days, other than loans from financial institutions given in the normal course of all business, are subject to all contribution limitations.
> (c) No candidate shall personally make outstanding loans to his or her campaign or campaign committee that total at any one point in time more than twenty thousand dollars ($20,000) in the case of any candidate, except for candidates for governor, or fifty thousand dollars ($50,000) in the case of candidates for governor. Nothing in this chapter shall prohibit a candidate from making unlimited contributions to his or her own campaign."

Under the Commission's current interpretation of section 85307(a), no person may extend credit to a state candidate in an amount prohibited by the contribution limits. With that in mind, the definition of "extension of credit" becomes important since more people, particularly providers of goods or services, could potentially commit contribution limit violations. In addition, it seems likely that an "extension of credit" can only be a contribution under the current provisions of the Act.

III. PROPOSED REGULATION 18530.7

In examining the past treatment of extensions of credit under the Act, staff believes it would be helpful to adopt a regulation that provides guidance as to when an extension of credit can trigger a contribution limit violation. However, an important question that should be addressed prior to making that determination is whether it is necessary to draft a regulation that applies beyond the context of contribution limits.

A. Application Beyond the Contribution Limits

The Commission has the statutory authority under the definition of "contribution" (section 82015) to determine when a "payment" (section 82044), including an "extension of credit," is a contribution for reporting purposes and for purposes of applying contribution limits. (See Table 1.)

Table 1

Type of Payment	Application
Unpaid bills are reportable as accrued expenses. (Sections 84211 and 82025; see also regulation 18421.6.)	Applies at the state and local levels (Schedule F).
Unpaid bills can become reportable contributions upon forgiveness of the debt or payment by a third party. (Sections 82015 and 82044.)	Applies at the state and local levels (Schedule C).

Therefore, the Commission may wish to develop a regulatory definition for extension of credit which is not limited to interpreting section 85307(a). Any regulatory rule based on this approach could also apply to transactions involving local candidates and ballot measure committees, not just to candidates or committees for state elective office.[10]

Assuming that the Commission agrees with the analytical approach that an extension of credit is a contribution, it should be emphasized that current reporting rules for accrued expenses are not altered; accrued expenses are required to be reported pursuant to section 82025. Essentially, by adopting a regulation regarding "extensions of

[10] The Commission has received comment from Shirley Grindle of Orange, California, and Oliver Luby of San Francisco, California, supporting adoption of a definition of this term which would apply to local candidates and committees.

credit" for purposes of section 85307, the Commission would merely further address the question of when an unpaid bill converts to a contribution.

However, further examination of the effect on the reporting of unpaid bills that become contributions is recommended by staff should the Commission wish to adopt a regulation outside of the context of contribution limits. For example, whether the new regulation will affect the Commission's past advice for determining whether the reduction of a debt will be a contribution should be further considered.

In addition, under an approach that extends beyond only the contribution limit provision of section 85307(a), questions regarding both reporting and contribution limits could be addressed by one regulation. Such an approach may have merit in that committees and vendors may commonly refer to certain credit agreements as "extensions of credit," but it may create confusion as to whether a particular payment is being correctly reported: Is the transaction an accrued expense? Is it a contribution? The Commission has statutory to decide these issues and to apply a regulatory definition of extension of credit beyond only the contribution limits, but it may not be desirable to do so.

After consideration of these issues, staff has proposed regulatory language to provide guidance as to when the provision of goods or services are contributions subject to the contribution limits solely for the purposes of section 85307(a). While it may be useful to develop a regulatory definition that applies across the board for both reporting and contribution limit purposes, staff believes it is only necessary to focus on transactions where it may be difficult to determine when a transaction has resulted in a contribution that leads to a contribution limit violation. The primary problem under existing Proposition 34 rules is whether there is a contribution limit violation. Generally, staff believes a regulation addressing "the provision of goods or services" will provide guidance for implementation of section 85307(a) since any provision of goods or services would be governed.

Decision Point 1: Staff Recommendation: Staff recommends the Commission draft a regulation for purposes of interpreting section 85307(a) only at this time.

Assuming the Commission agrees with the staff approach, two versions of a regulation interpreting section 85307 are summarized below. (Recommendation on the two versions is discussed at the end of this memorandum at **Decision Point 2**.)

B. Version A: Ordinary Course of Business

Version A encompasses extensions of credit which consist of provision of goods or services pursuant to an agreement between the provider of the goods or services and a candidate or committee where payment is not due until a later date. Version A provides for an "ordinary course of the provider's business" rule, to distinguish those situations where a vendor is carrying on business as usual with no intention of making a political contribution.

Under this version, it is presumed that a transaction is in the ordinary course of the provider's business if certain criteria are met:

- The credit arrangement for the provision of goods or services is recorded in a written instrument (subdivision (a)(1));

- It is a primary business of the provider of goods or services to provide similar goods or services on credit (subdivision (a)(2);

- The provider of goods or services enters into the agreement with the intent that the candidate or committee pay in accordance with the terms of the agreement, and if the candidate or committee is not able to pay in accordance with those terms, the provider entered into the agreement without actual knowledge of the candidate or committee's inability to fulfill the terms of the agreement (subdivision (a)(3); and

- The provider of goods or services makes reasonable efforts to collect the full amount of the payment owed within four months of the date that the payment for the goods or services is due under the terms of the agreement (subdivision (a)(4).

Decision Point 3: Optional language has been proposed for subdivision (a)(1) by the Enforcement Division which requires that the written instrument memorializing the credit arrangement be signed by the candidate or committee or an agent for the candidate or committee.

Decision Point 4: The Enforcement Division has also proposed a requirement in subdivision (a)(4) that reasonable efforts to collect the payment include three successive demand letters warning of possible legal action after the time for payment has expired.

Public comment has included both support and rejection of the optional language.

Essentially, Version A establishes an "ordinary course of the provider's business" standard by providing that, if a transaction is *not* in the ordinary course of business, a contribution subject to the Proposition 34 limits would result.

In this version, the phrase "ordinary course of the provider's business" is itself not defined,[11] but there is a presumption that a transaction is made in the ordinary course of business if the criteria of subdivision (a)(1) – (4) are met. If these criteria are not met, it is still possible for a person to show that a particular transaction was, in fact, made in the ordinary course of business.[12]

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[11] At the January 13, 2005, interested persons' meeting on this topic, Jerry Nottleson of the Franchise Tax Board stated that "ordinary course of business" issues have not been a problem in the past, but pointed out that they are still working on 2001 – 2002 audits.

[12] The issue of particular business practices of campaign consultants has been raised by Shirley Grindle. Ms. Grindle has expressed concern regarding the "waiving or reduction" of fees by campaign consultants.

The approach embodied in this version was supported by some persons attending the January 13, 2005, interested persons' meeting on this topic who believed it is desirable to set no specific time line, leaving this question to case-by-case determinations, albeit subject to a practical criteria.

C. Version B: "Bright Line" Rule and "Safe Harbor" Provision

Version B also applies solely for the purposes of section 85307(a). (Attachment 4.) In contrast to Version A, this version applies "where the period for payment by the candidate or committee extends for more than 30 days." This version is based on regulation 18530.7 developed under Proposition 208 rules.

Under this version, an extension of credit begins either 15 days after the payment date as specified on the invoice or a set number of days from the date the goods or services are delivered. Under **Decision Point 5** optional timeframes from the date the goods or services are delivered include 45, 60, or 90 days.

Example

March 25, 2005	Committee contracts with a printer for copying services
March 28, 2005	Committee receives its printed materials
May 4, 2005	Committee receives an invoice dated May 2, 2005, requiring payment by June 15

Assuming the 45-day optional language is selected by the Commission for subdivision (a)(2), the extension of credit *begins* on May 12, which is 45 days after March 28, the date the printed materials were received. (See subdivision (a)(2) of proposed regulation 18530.7.) This date is earlier than the alternate date of May 17, which is 15 days after the invoice date of May 2. (See subdivision (a)(1) of proposed regulation 18530.7, Version B).)

After identifying the date the extension of credit began, it must next be determined whether the period for payment extends for more than 30 days. Because in the example, the period for payment extends for 34 days to June 15, this transaction is an extension of credit subject to the limits.

In addition, she believes that measuring the value of campaign consulting is difficult and the subjectivity involved in valuing these services can result in an in-kind contribution which may exceed the applicable contribution limit. On the issue of payment for campaign consulting services, campaign consultant Wayne Johnson has pointed out that payment for media-related and postage services, viewed as critical to a campaign, tend to take priority over payment to other types of vendors when a committee decides the order in which to pay. This situation frequently results in campaign consultants ending up as some of the last vendors paid. With regard to issues of business practices of this particular sector, staff recommends that the Commission proceed with an extension of credit regulation that applies to all types of businesses, keeping in mind that the Commission could later develop a rule applicable to campaign consultants if it becomes apparent that a special rule is necessary.

As mentioned, this method of determining the period of an extension of credit is based on the former proposed regulation 18530.7 where a 30-day time frame was included in the statute. There has been some public comment that, although possibly offering less flexibility, an easier approach may be to simply count from the time the goods or services are delivered.

With regard to the extension of credit period, it should be considered that different types of businesses have different billing cycles, with some possibly extending 60 days or more. In addition, it is not uncommon for a vendor, such as a printer, to negotiate a larger down payment amount if he or she has discussed a longer than usual time for payment. However, any difficulty in developing a date-driven rule could be avoided by selecting a greater time frame that would be less likely to capture vendors who were just conducting business as usual.

Subdivision (b) provides for a "safe harbor" for vendors if specified criteria described in subdivision (a)(1) – (4) are met which would:

- Be a complete defense for the provider of goods or services in any enforcement action initiated by the Commission;
- Relieve the provider of goods or services of any reporting requirements of this title; and
- Be evidence of good faith conduct in any subsequent civil, criminal or administrative proceeding.

Version B's criteria are different from Version A's in several ways. First, to get the benefit of the safe harbor, the vendor must make reasonable efforts to collect the full amount owed within four months of the date on which the Commission determines that the extension of credit began rather than the date due under the terms of the agreement as in Version A. Second, under Version B the goods or services are to be provided in the ordinary course of business and on the same terms and conditions offered to customers generally. Under Version A, on the other hand, the specified criteria "define" what is considered to be "in the ordinary course of the provider's business." Third, unlike Version A, an extension of credit under Version B is based on a time period. Once the relevant amount of time has elapsed, an extension of credit will exist. Nothing else is required. Although arguably establishing an arbitrary timing rule, Version B is beneficial in that it provides an objective, "bright line," rule that can be easily applied. The vendor safe harbor is included to address the issue of varying business practices. Version B also has the same optional language discussed under **Decisions Points 3 – 4.**

Decision Point 1 – 2. Staff Recommendation: Selection of either version is essentially a policy decision before the Commission. Staff generally supports the adoption of a regulation addressing the contribution limit issues discussed above. The Enforcement Division specifically supports the Version B bright line rule for the reason that a presumption of an ordinary course of business standard will be difficult to enforce,

as the providers of political services vary significantly in their business practices. Secondly, the division prefers a safe harbor provision as incorporated in Version B.

There is public support for both versions. In general, members of the regulated community, or their representatives, prefer the flexibility of the ordinary course of business rule presented in Version A whereas others express a preference for the bright line rule of Version B due to enforcement considerations.

Decision Point 3 – 5. Staff Recommendation: For purposes of pre-notice discussion, the staff makes no recommendations on optional language at this time.

Attachments
Attachment 1 – Schedule C
Attachment 2 – Schedule E
Attachment 3 – Schedule F
Attachment 4 – Proposed Regulation 18530.7 (Versions A and B)